

**Before the Indiana
Board of Special Education Appeals**

*In the Matter of K.K., the New Prairie United)
School District and the South LaPorte County)
Special Education Cooperative, and the Indiana) **Article 7 Hearing No. 1062-98**
Department of Education)*

The Indiana Department of Education (DOE), by counsel, requested a due process hearing to resolve program issues concerning the Student's residential special education program. The request for hearing was received by the Division of Special Education on September 15, 1998. A prehearing teleconference was held on October 1, 1998. Present for the teleconference were the parents, the director of special education, the school's attorney, the attorney for the Department of Education and the independent hearing officer (IHO). The parents presented a list of issues/concerns which they categorized as "Procedural Issues," "Program Issues," and "Related Services." The IHO summarized the parents' concerns into three issues which were agreed upon to be the issues of the hearing:

1. Is the I.E.P.⁽¹⁾ developed by the school appropriate?
2. Is there an appropriate I.T.P.?⁽²⁾
3. Were there procedural violations by the school which have interfered with the provision of a free appropriate public education?

As a result of the prehearing conference, the IHO issued a prehearing order on October 10, 1998 which stated the above issues and also had the parents' concerns attached. At the prehearing conference, the parties stipulated that the classification of the Student was that of Autism/Asperger's Disorder and that the current placement in an out-of-state residential facility was appropriate. A joint extension of time was requested by the parties and was granted, making November 13, 1998, the deadline for the final decision. The parents also requested that the hearing be open and that there be a separation of witnesses. Both requests were granted.

Following the prehearing conference, the parents requested the Student be physically present for the hearing, and the school was ordered to provide transportation for him to attend the hearing. Subsequent information from the school and the parents caused the IHO to question whether it would be in the best interest of the Student to be transported to the hearing. An order was issued indicating that arrangements were to be made for the Student to participate in the hearing by telephone.

The hearing began on October 29, 1998 after a short procedural prehearing conference. During the prehearing conference, the evidence was reviewed. The Department of Education's Exhibits S-1 through S-5 were admitted without objection. The school's exhibits 1 through 19 were admitted without objection. The parents tendered Exhibits 1 through 11. The school objected to Parents' Exhibit 1 which included six audio tapes, as the audio tapes were identified as being "revised." The school also objected to Parents' Exhibit 5, pages 30-33 and Parents' Exhibit 7, pages 2 and 6, as not being relevant. The IHO noted the objections and admitted all of

the parents' exhibits.

The Student was telephonically present during the hearing on October 29, 1998, but due to technical difficulties it was difficult for the Student to hear all points of the proceedings. The IHO then questioned the parties concerning transportation of the Student to the hearing such that his safety could be assured. The IHO then ordered that arrangements be made to permit the Student's presence on the next dates of the hearing, November 5 and 6, 1998. The parents also requested an extension such that the final orders would be issued on or before November 16, 1998.

During the course of the hearing, the parents asked to submit a document to the record in lieu of their testimony. The document was admitted without objection and identified as Parents' Exhibit 12. At the end of the hearing, the school submitted School's Exhibit 20 without objection.

The IHO's Written Decision

The IHO's decision contained fifteen (15) Findings of Fact and eight (8) Conclusions of Law. The IHO determined the I.E.P. and I.T.P. developed by the school are appropriate, there were no procedural violations, twice monthly family therapy, once by phone and once in person, is appropriate requiring twelve parent visits per calendar year,⁽³⁾ and the school is not required to reimburse the parents for their personal telephone calls to their son nor for telephone calls made in seeking placement.

In summary, the IHO found the Student to be a 16 year old male eligible for special education and identified, by agreement of the parties, as having an Autistic/Asperger's Disorder. In March, 1998, the Student was placed in a residential out-of-state facility which all parties have stipulated is an appropriate educational placement. Prior to his placement in March, 1998, the Student had been placed in a psychiatric hospital in Indiana. An I.E.P. was developed on January 19, 1998 and signed on January 21, 1998 by the mother. This January 21, 1998 I.E.P. was provided to the out-of-state residential facility prior to the Student's placement and became the I.E.P. instituted at the residential placement. Prior to the placement of the Student in the out-of-state residential facility, the parents contend they made calls to out-of-state facilities in order to expedite the placement of the Student, but there was no evidence indicating these calls were at the direction of a case conference committee.

On April 27, 1998, a case conference was convened after school hours to serve as an annual case review and to formulate an I.T.P. The teachers, parents, therapists and school administrators were present and the Student was present telephonically. The residential facility indicated it had telefaxed information to the school prior to the conference, but the evidence indicated this information was not received prior to the conference by the school's participants. Because the information was not present at the case conference, I.E.P. goals and objectives were not completed. The committee did discuss evaluation data of current levels of performance, the Student's behavior, a review of strengths and weaknesses, and transition plans. The teacher at the residential facility had to leave the conference before its adjournment, but did share all relevant information he had with the committee prior to leaving.

Information from the residential facility did not consistently get delivered to both the school and the parents. Partially responsible for this was the parents' request that only educational information be exchanged from the residential facility to the school. The school did not have access to certain documents until the commencement of this due process hearing. Documents not made available to the school included evaluation reports, Individualized Service Plans, and 30 day reports. The parents did not receive 30 day reports consistently from the residential facility. The parents also restricted consultations between the school and the residential facility.

During the April 27, 1998 case conference it was agreed that family therapy would be conducted once a month in person and once a month by phone. This arrangement was recommended as appropriate by the mental health clinician of the residential placement. The arrangement was to be reevaluated in six (6) months. The residential facility was to initiate a telephone call to the parents once per month for family therapy. The parents were to give thirty days notification of their traveling and the school would make arrangements for airfare, hotel accommodations and a rental car.

At the conclusion of the April 27, 1998 case conference it was agreed the residential facility would create a draft I.E.P. which would be sent to the parents for input. The attorney for the parents would then forward this to the school for finalization at which point it would be forwarded back to the parents. An unresolved issue at the case conference was whether the school would reimburse the parents for personal phone calls to their son at the residential facility.

The school and the parents were unable to find a mutually agreeable time and place to reconvene the case conference until July 20, 1998. At the beginning of July, 1998, the school had not received feedback from the parents concerning the draft I.E.P. A case conference was reconvened on July 20, 1998. Present for the conference were the parents, the school's director of special education, the Student, the Student's mental health clinician, and the Student's teacher. The draft goals and objectives for the I.E.P. were available at the conference and parental input was used in creating the goals and objectives. The mother acknowledged the goals and objectives "pretty well incorporated what I sent them." The father then presented a list of issues and requested to know how the I.E.P. addressed each of his issues. Other members of the case conference committee indicated there wasn't time to address all of the father's issues and another case conference would be necessary.

The school had difficulty finding a time for a case conference which met the needs of the parents' schedule and the schedule of the residential facility as well as its own time constraints. The parents indicated they would not meet with the school while their son was home on a visit. The parties were unable to find a mutually acceptable time and place for a case conference until September 14, 1998. Present for the conference were the parents, the director of special education, teachers, the Student, and the Student's mental health clinician. This meeting lasted over six hours. During this conference the issues that were raised by the parents in the past case conference were addressed by members of the committee. The I.T.P. was again discussed. A disagreement between the parents and the school resulted over the number of reimbursed visits the parents could make with their son.

An I.E.P. and an I.T.P. were formulated from the input of the case conference participants over the series of case conferences which took place from April 27 through September 14, 1998. The I.E.P. and I.T.P. are appropriate for the Student. Behaviors, socialization and academics are monitored regularly and reported on a thirty (30) day summary. This monitoring procedure was beneficial and appropriate to monitor the Student's progress towards his goals and objectives.

A hearing request was made on September 15, 1998. On September 22, 1998, the parents made a request to review the school's records during the day of September 28, 1998. The school indicated that an administrator was to be present at the time of the parents' review and that on September 28, the director of special education would not be available. A time was set for the parents to review the records on September 29, 1998. This was canceled by the parents. The director of special education wrote a letter on October 13, 1998 to the parents indicating that they were available for the parents to review the records and had not heard from them since September 29, 1998.

Based upon the foregoing facts, the IHO made conclusions of law on each of the three issues presented for the hearing. The I.E.P.

designed during case conferences from April 27, 1998 through September 14, 1998 included input from all essential case conference members and included all required components. Family therapy at a frequency of once monthly in person and once monthly by phone was consistent with that recommended by the family therapist. 511 IAC 7-6-6(h) & (j) require the school to pay for not more than seven (7) round trips per student per fiscal year unless stated otherwise by the case conference committee and that if the parent travels to the residential facility, that travel may be in lieu of a student home visit. The recommendations regarding family therapy are that the parents visit the facility for therapy once per month. This would require twelve parent visits per calendar year.

The I.T.P. that was designed during case conferences held from April 27 through September 14, 1998 included input from all essential case conference members, including the Student. The I.T.P. is appropriate, is integrated with the goals and objectives of the I.E.P. and includes the essential elements necessary to guide and promote the movement of the Student from school to post-school activities.

No procedural violation was found in the scheduling of the case conferences. Scheduling around the schedules of the parents, the staff of the residential facility and school personnel generated great difficulty, but the school and residential facility's staff made many attempts to accommodate the schedules of the parents, including the scheduling of a full day for a case conference, having staff take time off from vacations, and having staff meet outside of their contractual hours. All necessary individuals were present for the case conferences and there were one or more teachers present at each conference. The length of the conferences necessitated teachers leaving prior to the end of some conferences, but their input was comprehensive prior to their leaving the conference. The parents were fully involved in each conference and the Student was also involved. The case conferences met the criteria of Article 7.

The school corporation is not responsible for personal telephone calls placed by the Student or placed by the parents to the Student. Telephone calls made by the parents without the direction of a case conference committee in an attempt to expedite the placement of their son are not subject to reimbursement by the school. Finally, there is no indication the school denied the parents access to the Student's records.

Procedural History of the Appeal

The parents timely filed a request for an extension of time in which to file their Petition for Review on December 14, 1998. The Board of Special Education Appeals (BSEA) granted the request on the same date. Thereafter, additional motions, requests for extensions of time, and orders were issued, as summarized below.

January 22, 1999:⁽⁴⁾ The parents filed a second request for extension of time to file their Petition for Review due to a delay in receiving the IHO's Conclusions Concerning Parents' Request for Second Hearing.⁽⁵⁾ The BSEA granted the request on this date, extending the time for the parents to file their Petition for Review until February 19, 1999. The BSEA also extended the time to complete the review and issue a final written decision to March 22, 1999.

February 1, 1999: The school, by counsel, filed its Motion for Extension of Time, which the BSEA granted the same date. The time for the school's response was extended until March 29, 1999 with the time to complete the review and issue a final written decision extended to April 28, 1999.

February 2, 1999: The parents filed a request for oral argument.

February 9, 1999: Notice of Oral Argument was issued, scheduling the review for April 14, 1999.

February 9, 1999: The parents submitted a request that the Student be present for the hearing.

February 10, 1999: The school, by counsel, submitted a response to the parents' request for the Student to be present for the hearing.

February 11, 1999: The BSEA granted the parents' request for the Student to be present for the hearing with the school to make arrangements and be responsible for the costs of transportation.⁽⁶⁾

February 18, 1999: The parents requested the Student's participation in the Graduation Qualifying Examination (GQE) be suspended until the appeal procedure in progress dictates otherwise.

February 18, 1999: Parents' Petition for Review is filed.

February 23, 1999: The DOE, by counsel, filed its Motion to Dismiss or, in the alternative, Motion to Strike Parents' request to prevent the Student's participation in the GQE.

February 24, 1999: The BSEA ordered the Student's participation in the GQE and dismissed the parents' request to suspend such participation.

February 25, 1999: The DOE, by counsel, filed its Motion to Strike or Dismiss from the parents' Petition for Review an audio cassette purporting to be a tape recording of the telephonic prehearing conference made without authorization by the IHO or consent of the parties.

February 26, 1999: The parents filed response to the DOE's Motion to Dismiss.

February 26, 1999: The DOE, by counsel, filed its Response to Petition for Review.

March 1, 1999: The parents requested the appointment of an IHO to determine whether the administration of the GQE should be suspended pending resolution of the appeal.

March 2, 1999: The BSEA denied the parents' request for the appointment of an IHO to determine whether the administration of the GQE should be suspended pending resolution of the appeal.

March 2, 1999: The parents requested the appointment of an IHO to address claims for reimbursement.

March 3, 1999: The BSEA denied the parents' request for the appointment of an IHO to address claims for reimbursement.

March 26, 1999: Parents filed response to the DOE's Motion to Strike audiocassette recording from Petition for Review.

March 29, 1999: School filed Motion to Strike, joining in the DOE's Motion to Strike audio cassette recording.

March 29, 1999: School filed Reply to the Petition for an Impartial Review of the Decision of the Hearing Examiner.

April 7, 1999: Parent's filed a Motion to Subpoena.⁽⁷⁾

The Parents' Petition for Review

In their petition for review, the parents raise objections to portions of the prehearing order, the IHO's decision, the IHO's conclusions concerning the parents' request for a second hearing, and raise due process issues in the manner in which the due process hearing was conducted. The parents object to the portion of the prehearing order indicating the parties stipulated that the Student was eligible for special education under the classification of Autism/Asperger's Disorder. The parents also raise an objection that the adaptation requested by the father was not provided during the hearing. This adaptation would be to slow the proceedings or provide further explanation.

As to the IHO's decision, the parents object to each finding of fact and conclusion of law, and orders 2 through 4. The parents present their exceptions to each fact, conclusion, and order, and generally allege the IHO's decision was rendered in violation of 511 IAC 7-15-6(k) in that the decision is arbitrary or capricious; is an abuse of discretion; is contrary to law, contrary to a constitutional right, power, privilege, or immunity; exceeds the jurisdiction of the hearing officer; was reached in violation of an established procedure; or is unsupported by substantial evidence.

The parents allege several due process violations in the conduct of the hearing. As noted above, they claim sufficient accommodations for the father were not made. As a result, they argue they were held to a higher standard than if they had been represented by an attorney. Additionally, the parents maintain they were denied their right to call the school's attorney as a witness and were denied their right to testify.

The parents also object to each of the IHO's conclusions concerning their second request for a hearing. In addition, they seek reimbursement for costs they have incurred in the hearing and appeal.

Department of Education's Response to Parent's Petition for Review

In its response to the parents' petition for review, the DOE notes that most of the issues raised by the parents involve the school rather than the DOE. The DOE does address five points raised by the parents. The DOE maintains the IHO exercised exceptional patience in explaining the proceedings and providing the parties with notice of their hearing rights, but argues that providing accommodations does not include the derogation of the rights of other parties. As to the parents' desire to call the school's attorney as a witness, the DOE references the attorney-client privilege at I.C. 34-46-3-1(1). The DOE notes that identification was not an issue raised for the hearing and it is also a non-issue, as the parties stipulated as to the Student's identification. While the parents referred to interstate I.E.P.s, no interstate I.E.P.s are involved in this case. Finally, as to the parents' right to testify, the DOE notes the record supports the IHO's determination that the parents offered an exhibit in lieu of their testimony.

School's Response to Parent's Petition for Review

In its response to the parents' petition for review, the school addresses fourteen specific areas of concern raised by the parents in their petition, the subsequent ruling by the IHO denying a request for another hearing concerning the same issues, and the issue of separate travel by the parents for the monthly family therapy. The school argues the record supports the IHO's decision in all aspects. The parties stipulated as to the student's identification. Although no diagnosis for an alleged disability of the parent was ever provided, the IHO was extremely patient in explaining procedures to the parents. The parents were not prohibited from testifying but offered an exhibit in lieu of their testimony. Although the parents were advised on several occasions of their right to be represented by counsel and chose not to be so represented, due process procedures were still applicable. The IHO was correct in ruling the parents could not call the school's attorney as a witness. The parents have referred to the January 21, 1998, I.E.P. as an "interstate I.E.P." This was the last I.E.P. developed prior to the Student's current placement. Because placement was not an issue in this hearing, the School requests the BSEA to strike references to placement. The parents' allegations concerning the proposed goals are not relevant to the issues of the hearing. The case conference committee did not request the parents to make phone calls to assist in the placement of the Student. Therefore, the parents are responsible for any calls they made. The related service of family therapy once per month in person and once per month by telephone is consistent with that recommended by the clinician who is presently treating the Student. Additional phone calls are the personal expense of the parents. The school did not deny the parents access to the Student's records. The evidence does not support the parents' allegations that case conference committee meetings were only arranged at the school's convenience. The IHO's order concerning the release of information between the school and the private facility is appropriate. The I.E.P.s and the I.T.P. are appropriate.

The school next addressed the parents' request for another hearing and maintained this is merely an attempt to avoid the appeal process and obtain a new hearing on previously litigated issues. As to the denial of reimbursement for claims submitted by the parents, the school has identified these claims as relating to personal phone calls, parking and mileage for the due process hearing, and a Thanksgiving trip to visit the Student. Reimbursement for the personal phone calls and Thanksgiving trip were denied pursuant to the IHO's order. Parking and mileage for the hearing were denied as there is no legal basis to hold the school responsible for those expenses. Finally the school addresses the issue of separate travel for the mother which the parents have requested due to the mother's work schedule. The school notes that the mother's change of job, and therefore her work schedule, occurred prior to the due process hearing, yet the parents failed to disclose this fact to the IHO.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

The Indiana Board of Special Education Appeals met on April 14, 1999, for oral argument and to conduct its review of the above-referenced matter. All members were present and had reviewed the record, the Petition for Review, Responses and other pleadings. The parents and student were present. The school was represented by its director of special education and by legal counsel. The Indiana Department of Education was represented by counsel. At the request of the parents, the appeal hearing was open to the public. Oral argument was held on the DOE's Motion to Strike or Dismiss the parents' tape recording from their Petition for Review. All of the parents' requests for hearing and complaint issues which were submitted to the Indiana Department of Education subsequent to the IHO's decision and were determined to be related to the issues of this hearing had been referred to the BSEA for consideration in this appeal. These issues are not addressed separately as they are included within the issues raised in the Petition for Review, which raised objections to every Finding of Fact and Conclusion of Law and all but one of the IHO's Orders. All parties presented oral argument and rebuttal on the Petition for Review. The school offered into evidence a tape recording and transcript of the most recent case conference committee meeting. This offer of evidence was refused by the BSEA. The Indiana Board of Special Education Appeals now finds as follows:

Combined Findings of Fact and Conclusions of Law

1. The Indiana Board of Special Education Appeals (BSEA) has jurisdiction in the matter pursuant to 511 IAC 7-15-6.
2. A telephonic prehearing conference was conducted by the IHO on October 1, 1998, which was summarized by the IHO in a prehearing order dated October 10, 1998.
3. Although no request was made of the IHO that the prehearing conference be recorded, the parents tape recorded this conference without notice to, or consent of, the IHO or the other parties.
4. The IHO's prehearing order of October 10, 1998, was provided to all parties. No objections to the prehearing order were made upon receipt of the order, at the hearing itself, or at any time prior to the issuance of the IHO's decision. Any objections to the prehearing order are waived.
5. The prehearing order of October 10, 1998, is the official record of the prehearing conference. The parents' secret recording of this conference is not admissible on appeal.
6. The parties have stipulated the Student is eligible for special education and related services as a student with autism/Asperger's disorder. Identification was not an issue in this hearing.
7. Placement was not an issue in this hearing.
8. An I.E.P. and an I.T.P. were developed during case conferences from April 27, 1998 through September 14, 1998. These conferences included input from all members, including the parents. No procedural violations occurred in the conduct of the case conferences.
9. The I.E.P. and I.T.P. developed during the case conferences from April 27, 1998 through September 14, 1998 are appropriate.
10. Family therapy at a frequency of once monthly in person and once monthly by telephone is appropriate to meet the Student's needs. If the parents are unable to both attend together, the parents may decide which parent will attend.
11. Since the issuance of the IHO's decision, the parents have, in essence, requested that family therapy in person be provided twice per month due to the work schedules of the parents which preclude them from both attending therapy at the same time. The incompatibility of the parents' work schedules was known to the parents at the time of the hearing before the IHO, yet the parents chose not to make the IHO aware of these concerns.
12. Parent travel to the residential facility for family counseling and training may be lieu of a student home visit. 511 IAC 7-6-6(j). Similarly, should the parents and the Student wish for a Student home visit, at the school's expense, this may be done in lieu of a parent visit. This does not preclude more frequent visits at the expense of the parents, but the school is only responsible for parent travel for once monthly family therapy or for a Student visit home in lieu of parent travel.

13. There were no due process violations in the conduct of the hearing.
14. The IHO's Findings of Fact are supported by substantial evidence.
15. The IHO's Conclusions of Law are based upon the facts and consistent with and supported by the law.
16. The IHO's Orders are appropriate.
17. The parents are not entitled to reimbursement for preplacement telephone calls or personal telephone calls made to the Student.
18. The school arranged for and paid the air fare for transporting the Student to the hearing and the appeal. The orders pertaining to the Student's attendance at these hearings provided the school would arrange and pay for the Student's air fare and the parents were responsible for the Student at all times except during the hearing itself. No objections were raised by the parents to these orders. Meeting the Student at the airport, transporting to the hearing and any overnight visitation were the responsibility of the parents. The school is not responsible to reimburse the parents for any additional expenses related to the Student's attendance at the hearing.
19. The parents' visit to the Student in November, 1998, for Thanksgiving was not for the purpose of family therapy. Prior to this trip, the parents had utilized all ten of the trips at school expense allotted for 1998. The parents are not entitled to reimbursement for their Thanksgiving visit, nor entitled to any additional trips at public expense for calendar year 1998.

All votes by the BSEA regarding the above were voice votes and were unanimous.

Orders of the Indiana Board of Special Education Appeals

In consideration of the above Combined Findings of Fact and Conclusions of Law, the Indiana Board of Special Education Appeals now holds:

1. The DOE's Motion to Strike or Dismiss the audiotape of the prehearing conference from the parents' Petition for Review is granted.
2. The School's Motion to Strike the parents' objections to placement is granted as placement was not an issue in the hearing.
3. The IHO's Findings of Fact, Conclusions of Law, and Orders are upheld in their entirety.
4. The IHO's Order Number 2 is amended by adding the following:

Twelve round trip family visits shall be taken to mean a total of twelve round trips per year by either one parent or both parents traveling together. If the child visits home, that is to be counted as one of the twelve allowed visits. Unless the case conference committee recommends otherwise, this clarification will continue to apply.

5. The school is not responsible to reimburse the parents for their Thanksgiving trip to visit the Student.

6. All other Motions not specifically addressed herein are hereby deemed denied.

Date: April 16, 1999 /s/ Raymond Quist, Ph.D.

Raymond Quist, Ph.D., Chair

Board of Special Education Appeals

Appeal Right

Any party aggrieved by the written decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to request judicial appeal from a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-15-6(p).

1. Individualized education program.

2. Individualized transition plan.

3. A trip by the student to visit home could be substituted in lieu of a parent visit.

4. Most of the filings from the parents were submitted by facsimile transmission and by mail. The BSEA accepts pleadings and correspondence by facsimile transmission provided the originals are also mailed. The date of filing corresponds with the business date the facsimile transmission is received. When the facsimile transmission is submitted after the close of business hours or on the weekend, the date of filing will be the next business day.

5. On December 28, 1998, the parents submitted a request for a due process hearing. Because a Petition for Review had not yet been filed, this request was referred to the IHO for his determination as to whether the issues raised had been addressed in the hearing. He concluded the first issue, the parents' request to limit the participation of the school corporation's attorney in case conference committee meetings, was not a hearable issue or within the scope of an IHO's jurisdiction as 511 IAC 7-12-1(e)(6) allows other individuals at the discretion of the public agency to attend a case conference. Issues 2 - 10 were found to be issues which related directly to the hearing decision or related to the appropriateness of the I.E.P. and related services which were issues addressed in the hearing. The parents were advised they could include these issues in their Petition for Review or appeal his conclusions to the BSEA.

On February 8, 1998, the parents again submitted another request for a hearing raising two issues, which were also referred to the IHO. The parents subsequently withdrew the first issue and requested that issue be investigated as a complaint. The IHO determined the remaining issue, relating to reimbursement for transportation, was addressed in the hearing, and a new hearing on the same issue would not be granted.

6. Several other pieces of correspondence were later received from the parents concerning the arrangements for transportation. As these were not motions, and required no action on the part of the BSEA, they are not listed here but are contained in the record of the proceedings.

7. This Motion to Subpoena specified that the parents wished to subpoena the school's superintendent if the school subpoenaed the mother's employer. No requests for subpoenas were filed by the school. As the parents' request for a subpoena was contingent upon the school requesting a subpoena, no action was taken on this matter.

